MONTANA LEGISLATIVE HISTORY

Chapter 362 19 79

Bill H 514 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	2/6	✓ C	Hearing Date(s)	3/5	✓ C
Bill Passed	2/6	✓ C		3/6	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ✓ No

Committee _____ Report _____

CHAPTER NO. 362

HOUSE BILL NO. 514

INTRODUCED BY RAMIREZ, PORTER

IN THE HOUSE

February 1, 1979	Introduced and referred to Committee on Judiciary.
February 7, 1979	Committee recommend bill do pass. Report adopted.
February 8, 1979	Printed and placed on members' desks.
February 9, 1979	Second reading, do pass.
February 10, 1979	Considered correctly engrossed.
February 12, 1979	Third reading, passed. Transmitted to second house.

IN THE SENATE

February 13, 1979	Introduced and referred to Committee on Judiciary.
March 7, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 9, 1979	Second reading, concurred in.
March 13, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 14, 1979	Returned from second house. Concurred in as amended.
March 16, 1979	Second reading, amendments adopted.
March 17, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

HOUSE BILL NO. 514

INTRODUCED BY Ramirez Foster

A BILL FOR AN ACT ENTITLED: "AN ACT AFFIRMING THE VALIDITY OF DEEDS OF TRUST NOT INTENDED TO CONSTITUTE TRUST INDENTURES UNDER THE SMALL TRACT FINANCING ACT; PROVIDING THAT SUCH INSTRUMENTS ARE SUBJECT TO THE LAWS CONCERNING MORTGAGES AND WHEN RECORDED PROVIDE SUBSEQUENT PURCHASERS AND ENCUMBRANCERS WITH CONSTRUCTIVE NOTICE; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Deeds of trust and trust deeds not invalidated. The Small Tract Financing Act of Montana does not invalidate or preclude the use in this state of instruments, sometimes denominated deeds of trust or trust deeds, which are not executed in conformity with Title 71, chapter 1, part 3, but in which a conveyance for security purposes is made to a trustee or trustees for the benefit of one or more lenders. Such instruments are considered to be mortgages and are subject to all laws relating to mortgages on real property. Every such instrument, recorded as prescribed by law, from the time it is filed for record is constructive notice of its contents to subsequent purchasers and encumbrancers.

Section 2. Effective date. This act is effective on passage and approval.

-End-

INTRODUCED BILL

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 6, 1979

The meeting was called to order at 8:00 a.m. by Chairman Scully in room 436 of the Capitol Building on Tuesday, February 6, 1979. All members were present except Representative Eudaily, in the hospital in Missoula.

HOUSE BILL NO. 506: Representative Hershel Robbins, as sponsor of the bill asked that it be tabled. The hearing closed on HB 506.

HOUSE BILL NO. 514: Representative Ramirez spoke to the bill, as chief sponsor. The Small Tract Financing Act of Montana does not invalidate or preclude the use of deeds of trust or trust deeds. He went on to explain. It permits a type of financing, a trust indenture. The trust indenture does not have to go through a foreclosure procedure. The trust indenture is permitted in very limited circumstances because the borrower gives up the right of redemption. He discussed the case of Alexander Lumber vs Dykster House. He explained how the bill would work.

Deeds of trust and trust deeds are used for large loans where one lender cannot put up that much money, for example, several million dollars. He went on at some length and explained the differences.

The decision of the Supreme Court casts some doubt on the validity of the deeds of trust. The bill says that deeds of trust will be treated as mortgages. There followed some discussion and questions about trust indentures, interest rates, and mortgages, trustees, and trusts.

There were no further questions. no further discussion and the hearing closed on House Bill No. 514.

The meeting adjourned at 8:10 and the committee went into executive session.

John P. Scully, Chairman

Mary Ellen Connelly

Mary Ellen Connelly, Secretary

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
EXECUTIVE SESSION
February 6, 1979

Following the regular meeting the committee went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 8:10 a.m. in room 436 of the Capitol Building on Tuesday, February 6, 1979. All members were present except Representative Eudaily, in the hospital.

HOUSE BILL NO. 506: Representative Lory moved to "table" and the motion carried with the vote unanimous.

HOUSE BILL NO. 514: Representative Keyser moved "do pass" and the motion carried with the vote unanimous. Representative Lory moved to place it on the consent calendar. Representative Roth voted "no" for the consent calendar and it did not carry.

HOUSE BILL NO. 422: Representative Keedy moved to amend line 1, page 2 as follows: Strike: "a", and strike "drug" and insert "drugs". The motion carried with the vote unanimous. He also moved to amend page 2, line 2, by striking "to exceed" and inserting "less than 2 years or more than". The motion carried after much discussion. Representative Holmes talked against the motion and voted "no" on the motion. Representative Day also voted "no".

There was discussion about suspension of sentences. Representative Lory moved "do pass as amended". The motion carried with the vote unanimous. The committee moved to attach a statement of intent to the bill.

HOUSE BILL NO. 500: Representative Lory moved "do pass". Representative Keedy moved to amend page 2, line 6 by striking "regulation" and inserting "rule". The motion carried with the vote unanimous.

There was much discussion about the section. Representative Lory moved to amend page 2, lines 4, 5 and 6, following: 50-32-101, by striking those lines in their entirety. The motion carried with the vote unanimous. This will negate the first amendment since the section will no longer be there.

The committee moved and voted by unanimous consent to attach a statement of intent to the bill. The motion to pass carried with the vote unanimous.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 5, 1979

The fifty-first meeting of the Senate Judiciary Committee was called to order by Chairman Everett R. Lensink, in room 331 of the capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF HOUSE BILL 514:

This is an act affirming the validity of deeds of trust not intended to constitute trust indentures under the small tract financing act; providing that such instruments are subject to the laws concerning mortgages and when recorded provide subsequent purchasers and encumbrancers with constructive notice, etc. Representative Rameriz stated that he introduced this bill at the request of a former senator, Jim Hoy. He gave a brief explanation of this bill.

There were no further proponents and no opponents.

Senator Van Valkenburg asked what was the case and Representative Ramirez said that it was R. Amsterdam Lumber versus Dystra House. He stated that in this decision what was attempted was a trust indenture and the trust indenture did not meet requirements of the small tract financing act. He stated that a trust indenture does not have to be foreclosed like a mortgage so there are very strict requirements under the small finance act .

Senator Towe stated that he was a little confused on one point. He asked if you have a trust indenture that was to conform but for some reason fails to comply then then would that decision apply. Representative Rameriz gave an explanation of what this would do. Senator Towe stated that he was concerned about the loose language and felt that this statute might cause some confusion. He wondered if "such instruments" might not include any instruments. Representative Rameriz stated that this will not hurt anybody.

There was some further discussion between Representative Ramirez and Senator Towe on this bill and the hearing on this bill was closed.

DISPOSITION OF HOUSE BILL 514:

Senator Towe moved that the bill be amended on page 1, line 16, following "deeds of trust" strike "or" and insert a "," and on page 1, line 17, following "deeds," insert "or trust indentures," and amend the title accordingly.

Senator Brown requested that this bill be held over until this evening's meeting.

DISPOSITION OF HOUSE BILL 519:

Senator O'Hara moved that the bill be not concurred in. Senator Lensink stated that this would give us another two years trial. A vote was taken and the vote tied. (See roll call vote.). A tie vote means that the bill will stay in committee.

There being no further business, the meeting was adjourned.

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Lengthens the time a resident can be in a facility before a habilitation plan is begun from 14 to 30 days and provides that the parent or responsible person, in addition to the resident, will receive information concerning the care and habilitation of the resident.

Section 10. amend 53-20-161. Maintenance of records. Establishes procedures for release of records. Release can be authorized by a resident, parent, or guardian, or the superintendent of the residential facility under certain circumstances. Parties can be object to the release of information by the superintendent.

Section 11. amend 53-21-187. Clothing for patients discharged or conditionally released.

3.) HB 519 (Scully)

Current Law - in certain cases, a party to a law suit can recover his attorney fees from the other party. Currently, "reasonable and necessary" fees are the customary fees charged in the county in which the trial is held, and such fees can not be computed on a contingency basis (fees which are contingent on winning and are usually higher).

Proposed Bill - changes the method of computing fees. Bill provides that reasonable and necessary fees are the customary fees charged in the county in which the attorney practices or the customary fees charged by attorneys in a specialized field.

Note - there is no geographical limitation on the specialty (ex. there is probably a difference between a New York tax lawyer and a Montana tax lawyer's fees). Also, the bill allows necessary fees to be computed on a contingency basis.

4.) HB 401 (Harper)

Current Law - allows witnesses in all courts in civil and criminal cases only a per diem and mileage.

Proposed Bill - adds payment of expenses of meals and lodging to witnesses on the same basis as employees of the state are allowed such expenses.

Problems -

1. Typo in title, line 6: should read "26-2-501".
2. Should 26-2-507 be amended to provide for prepayment of expenses of meals and/or lodging as well as prepayment of fees and mileage?

5.) HB 514 (Ramirez)

Current Law - provides for two basic methods of financing purchases of real property: mortgages and trust indentures.

In the case of a mortgage, the purchaser holds title to the property. In the case of a trust indenture, the title is held in trust for the benefit of the purchaser.

Proposed Bill - clarifies that arrangements in which title is transferred for security purposes but which do not meet the statutory requirements for trust indentures are not invalid and are to be treated as mortgages.

Question - Is the application of this bill retroactive?

DISPOSITION OF HOUSE BILL 270:

Senator Lensink stated that nothing has happened in the last 84 years. Senator Turnage stated that you can't have atrust that will never vest. Senator Towe said we should look at it and Senator Turnage stated this "if at all" just turns it all backwards and Senator Van Valkenburg said that it intends to clarify. Senator Turnage stated that if this is to clarify, he would suggest that the bill die. Senator Lensink stated that you might want to talk to Representative Kemmis and take this up tomorrow. This was agreed upon.

DISPOSITON OF HOUSE BILL 250:

Senator Brown stated that he thought that this is going to create tremendous problems and is the best relief bill for attorneys that has ever passed. He stated that that notice is going to be so general from now on that it is going to cause more harm to the public. He stated that some amendments are very, very necessary and if you pass this bill, you are necessitating two hearings.

Senator Turnage said he did not know about 30 to 40 days notice. Senator Brown stated that the reason they are extending this to 30 days is because of the deadline in the Secretary of State's office.

Senator Brown moved that this bill be not concurred in and the motion carried unanimously.

DISPOSITION OF HOUSE BILL 514:

Senator Towe moved that this bill be amended on page 1, line 5 , strike "not intended to constitute" and on page 1, line 6, strike "under the small tract financing act", and amend on page 1, line 16, following "of trust", strike "or" and on line 17 insert "," and insert "or trust indentures,". The motion carried unanimously.

Senator Turnage moved that the bill be concurred in, as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned at 11:28 a.m.

SENATOR EVERETT R. LENSINK, CHAIRMAN

HOUSE BILL NO. 514

INTRODUCED BY RAMIREZ, PORTER

A BILL FOR AN ACT ENTITLED: "AN ACT AFFIRMING THE VALIDITY OF DEEDS OF TRUST ~~NOT--INTENDED--TO-CONSTITUTE~~ AND TRUST INDENTURES ~~UNDER-THE-SMALL-TRACT--FINANCING--ACT~~; PROVIDING THAT SUCH INSTRUMENTS ARE SUBJECT TO THE LAWS CONCERNING MORTGAGES AND WHEN RECORDED PROVIDE SUBSEQUENT PURCHASERS AND ENCUMBRANCERS WITH CONSTRUCTIVE NOTICE; AND PROVIDING AN EFFECTIVE DATE."

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REFERENCE BILL